IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9804 of 2002

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. D.S.SINHA
and
Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES YES

2. To be referred to the Reporter or not? YES :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO SEEN

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? NO :

HARIPRASAD S BHATT

Versus

AGRICULTURAL PRODUCE MARKET COMMITTEE

Appearance:

1. Special Civil Application No. 9804 of 2002
MR JV JAPEE for Petitioner
..... for Respondent No. 1-5

CORAM : THE CHIEF JUSTICE MR. D.S.SINHA
and
MR.JUSTICE J.M.PANCHAL

Date of decision: 16/12/2002

ORAL ORDER

(Per : THE CHIEF JUSTICE MR. D.S.SINHA)

Heard Mr.J.V.Japee, the learned counsel appearing for the petitioner.

2. The petitioner, a former employee of the Agricultural Produce Market Committee, Himatnagar, District:Sabarkantha, the respondent No.1, has filed instant petition under Article 226 of the Constitution of India, by way of Public Interest Litigation, alleging that the respondent No.1 committed gross illegalities and irregularties in 10 appointments of its staff by appointing the close relatives of its Members, Chairman, Vice-Chairman and also of the Director, Agricultural Market and Rural Finance, Gujarat State. On this premise, he urges this Court to initiate appropriate inquiry in accordance with law against the alleged illegal appointments made by the respondent No.1. Further prayer of the petitioner is that the concerned authorities be directed to take appropriate actions against the respondent No.1.

3. From the material on record it transpires that the alleged irregularities in the appointment of the staff of the respondent No.1 were taken note of by the relevant authorities. Eventually, by an order dated 8th August, 1996, passed by the Director, Agricultural Market and Rural Finance, State of Gujarat, the appointments under reference were cancelled.

4. It is apposite to notice that the matter of alleged illegal appointments of the staff of the respondent No.1 was also agitated in this Court by one Shri Nareshbhai Bhikhabhai Parmar through Special Civil Application No. 5322 of 1996; and that Special Civil Application was dismissed as infructuous on the statement of Mr.D.M.Thakkar, the learned counsel appearing for the petitioner, to the effect that an order by the competent authority had already been passed.

5. The order dated 8th August, 1996 cancelling the appointments of the staff of the respondent No.1 was assailed before the State Government in revision. The State Government set aside the order dated 8th August, 1996 vide its order dated 10th September, 1996. The State Government took the view that the order dated 8th August, 1996 was bad, inasmuch as the respondent No.1 was not afforded any opportunity of hearing by the Director, Agricultural Market and Rural Finance, State of Gujarat, which was mandatory under the provisions of the Gujarat

Agricultural Produce Markets Act, 1963, hereinafter called the "Act".

6. The order of the State Government dated 10th September, 1996 setting aside the order dated 8th August, 1996, was neither ever challenged by anybody nor is under challenge in the instant petition. Consequently the order has become final. For so long as the order dated 10th September, 1996, passed by the State Government, in exercise of its statutory powers conferred by the Act, holds the field and is not set aside in appropriate proceeding, the question of alleged illegalities in the appointment of the staff of the respondent No.1 is not open to investigation.

7. There is another aspect of the matter, viz. that the ten members of the staff of the respondent No.1, who are likely to be affected, have not been impleaded in this petition as respondents. In their absence, the alleged illegalities in their appointment cannot be agitated.

8. The attention of the counsel of the petitioner has been drawn to the fact that the order of the State Government dated 10th September, 1996 is not under challenge in this petition; and that the ten members of the staff, who are alleged to have been illegally appointed, are not parties before the Court in this proceeding, and in their absence it would not be legally permissible to embark upon the inquiry about the alleged illegalities in their appointment. But, the Court received no response from the counsel.

9. For what has been said above, the Court is of the opinion that instant petition has no legs to stand and it must fail.

10. Consequently, the petition is dismissed.

(D.S.Sinha,C.J.)

(J.M.Panchal,J.)

(patel)